appellant at their request a history of the accident, and in negotiating for a settlement of the third party claim they were acting on the authority contained in condition 5 of the policy. The effect of such a provision as in condition 5 was considered in the case of *Groom* v. *Crocker*.(2) There, Sir Wilfrid Greene said at p. 196:—

"The effect of the provisions in question is, I think, to give to the insurers the right to decide upon the proper tactics to pursue in the conduct of the action, provided that they do so in what they *bona fide* consider to be the common interest of themselves and their assured."

Although his Lordship was speaking only of the conduct of the proceedings, in a later case, *Beacon Insurance Co. Ltd.* v. *Langdale* (3) these observations were held to be equally applicable to the settlement of claims by the insurers.

The facts of *Beacon's* case are similar to the present one. The appellant had insured with the respondents against third party risks. His motor cycle was involved in a collision with a cyclist who claimed damages. The appellant filled up the usual claim form giving an account of the accident and sent it to the respondents. The policy contained a term that "the company shall have full discretion in the conduct of any proceedings or in the settlement of any claim". The respondents settled the cyclist's claim without notice to the appellant and against his view of the rights in the matter. Slesser L.J. said:—

". . . . the insurance company behaved at all times with complete propriety. They drew the attention of the assured, on the claim form itself, to the terms of the contract. They made what they believed to be, in his interest and theirs, an advantageous settlement, and they were at pains to show that the settlement should be made with a denial of liability."

The same could be said of the respondents in this case. They were within their rights in effecting a settlement "in the common interest of themselves and the insured".

The next point for consideration is whether they could call on the appellant to reimburse them for money paid to third party. This must depend on the terms of the contract between the parties. The proviso to section 78 of the Road Traffic Ordinance says:—

"Provided that nothing in this section shall be taken to render void any provision in a policy or security requiring the person insured or secured to repay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties."

There is no evidence of any undertaking by the appellant to repay the respondents any money which they were liable to pay under the policy to the third party. The policy was never put in as an exhibit.

The only terms of the contract disclosed are:—

(1) An agreement by the respondents to indemnify the appellant (subject to certain conditions on the policy) in the event of an accident caused by or arising out of the use of the appellant's motor vehicle No. MA 5470 against all sums which the appellant should be legally liable to pay to third parties. This appears in paragraph 3 of the statement of claim.

(2) Conditions 4, 5 and 10 set out in paragraph 4 of the statement of claim.

Only these were admitted in the defence.

In *Beacon's* case there was evidence of a condition in the policy whereby the insured agreed with the insurance company that he should be liable to pay the first £5 (or any less amount for which the claim may be settled) of each claim arising under the policy on or before a certain date, which expression "claim" shall mean a claim or series of claims arising out of one cause.

As Slesser L.J. observed:—

"Once it is conceded, or found, that the respondents have the power to settle the claim, the event which is contemplated in this provision has arisen. There has been a settlement, and under the terms of the policy he is thereupon liable to pay the first £5 for which the claim has been settled."

The respondents never pleaded that it was a term of the contract that the appellant should reimburse them. On the contrary, the claim was for money paid to the use of the appellant. It was argued that there was a *quasi-contract*. The terms of the contract having been reduced to writing in the policy, I cannot see how the respondents could found their claim on a *quasi-contract*.

The appeal is allowed. The judgment of the learned magistrate is set aside. The appellant will have the costs here and in the court below.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

LEE CHEE PHENG & ANOR. v. LEE CHEE POOI & ORS.

[O.C.J. (MacIntyre J.) December 4, 1967]
[Ipoh — Civil Suit No. 550 of 1966]

Mining — Agricultural titles converted into mining certificates — Certificates for a period of 10 years — Failure to renew certificates — Land reverting to State — New certificate granted on new application by some of original co-lessees — Whether new holders holding certificate as trustees for all original co-lessees.

Lee Koo, the father of the plaintiffs and defendants in this case, died possessed of a half undivided interest in the agricultural holdings now comprised in mining certificate No. 3713. After his death his estate was distributed among the beneficiaries who consisted of 5 sons — the plaintiffs and defendants herein — a widow, three daughters and a grand-daughter. Their respective shares totalling the undivided half interest in the said lands were registered in the proportions agreed to by them under a deed of family settlement. Later the agricultural titles were converted into mining certificates for a 10 year period expiring on August 20, and September 18, 1960, respectively.

In 1954 the Collector of Land Revenue informed the solicitors for the co-lessees that mining leases in replacement of the mining titles were ready for issue, but they were never issued because some of the co-lessees could not be contacted to sign the lease. In 1960 a few days before the expiry of the mining certificates, the 3rd defendant purporting to act on behalf of all the co-lessees, applied for their renewals for a further period of 5 years. These applications were not accepted by the collector because they were not signed by all the co-lessees. Then on the instruction of the 3rd defendant his solicitors, purporting to act on behalf of all the co-lessees, applied for a renewal of the titles, but the applications were rejected on the ground that the mining certificates had by then expired. Subsequently in May 1963 the three defendants applied to the collector for the issue of a new title for the same land in their own names. The application was granted and the mining certificate No. 3713 was issued to them.

In this action the plaintiffs claimed for a declaration that the defendants hold the mining certificate 3713 in respect of the land in question as trustees for themselves, the plaintiffs and the other beneficiaries of the estate of Lee Koo decd., in the same proportions as each of these persons previously held in the earlier mining certificates.

Held: the issues in this case must be determined on the basis of relationship between the parties as co-lessees only. The mining titles expired in August and September 1960 and thereupon the relation between the defendants and plaintiffs as co-lessees ceased. In 1963 when the defendants applied for a new title to the same land they succeeded in obtaining it despite the fact that they did not constitute all the former co-lessees, and the 3rd defendant was under no obligation, either legal or moral, to have applied for a new title on behalf of all the other co-lessees. Therefore there was no merit in the claim in this action.

Cases referred to:—

(1) *Phipps* v. *Boardman & Ors.* [1965] 1 All E.R. 849; [1965] Ch. 992; [1965] 2 W.L.R. 839, C.A.

(2) *Clegg* v. *Edmondson* 44 E.R. 593.

(3) *Pickering* v. *Vowles* 28 E.R. 1080.

(4) *Keech* v. *Sandford* 22 E.R. 629.

CIVIL SUIT.

W. S. W. Davidson for the plaintiffs.

N. T. Rajah for the defendants.

Cur. Adv. Vult.

MacIntyre J.: The claim in this action is for a declaration that the defendants hold mining certificate 3713 in respect of 40¾ acres of land, situate in the Mukim of Sungei Raia, District of Kinta, State of Perak, as trustees for themselves, the plaintiffs and the other beneficiaries of the estate of Lee Koo, deceased, in the same proportion as each of these persons previously held in mining certificates 1865 and 1870; and for consequential reliefs and costs.

Originally, during the lifetime of Lee Koo, the land now comprised in M.C. 3713 consisted of two agricultural holdings comprised in two certificates of title, namely, C.T. 11202 and C.T. 1883 for lots 7670 and 952, respectively. Lee Koo had only a half undivided interest in the lands. The other half interest in C.T. 11202 was registered in the name of one Au Nai Hing as representative of Au Kong, deceased, and the other half interest in C.T. 1883 was registered as to a one-fourth share in the name of the aforesaid Au Nai Hing as representative of Au Kong, deceased, and the remaining one-fourth share in the name of Fong Shau Nam.

After the death of Lee Koo, his estate was distributed among the beneficiaries who consisted of five sons — the plaintiffs and defendants to this action — a widow, three daughters, and a grand-daughter. Their respective shares totalling an undivided half interest in the said lands were registered in the proportions agreed to by the beneficiaries under a deed of family settlement (A11) dated 15th April 1946. Later, on the application of the co-lessees, the agricultural titles were converted into mining certificates. 7670 and C.T. 1883 by M.C. 1870 for lot 952 for a ten year period expiring on the 20th of August and 18th of September 1960, respectively.

In the latter part of 1954 the Collector of Land Revenue informed M/S. Leong Yew Koh & Co., the solicitors for the co-lessees, that mining leases in replacement of the aforesaid mining titles were ready for issue; but they were never issued at all because some of the co-lessees, according to information given by the 3rd defendant to his solicitors could not be contacted to sign the leases. In 1960, a few days before the expiry of the aforesaid mining certificates, the 3rd defendant purporting to act on behalf of all the co-lessees applied for their renewal for a further period of five years. These applications were not accepted by the Collector also because they were not signed by all the co-lessees. Then on the instructions of the 3rd defendant, M/S Leong Yew Koh & Co., purporting to act on behalf of all the co-lessees, applied for a renewal of the titles, but the applications were rejected on the ground that the mining certificates had by then expired. Subsequently, in May 1963 the three defendants applied to the Collector for the issue of a new title for the same lands in their own names. The application was granted and the aforesaid mining certificate No. 3713 was issued in their names. The circumstances in which the defendants obtained the new title for themselves to the exclusion of the other co-lessees and former beneficiaries of the estate of Lee Koo, deceased, is the story behind this action.

The story begins with the death of Lee Koo alias Lee Yip Kee on the 30th of March 1939. Probate of his will was granted to the 1st plaintiff in November 1939 and jointly with the 2nd defendant in May 1941. Under the terms of the will the estate was to be distributed after the expiration of five years from the date of the death of the testator. The executors therefore in the meantime resumed mining operations formerly carried on by the deceased as the sole proprietor of the Chin Thye Mining Kongsi over some of the estate property. Then on the 28th day of July 1946 an order of the

Supreme Court at Ipoh was obtained to distribute the estate in accordance with the deed of family settlement.

Despite the distribution, the former beneficiaries decided to carry on mining operations as partners under the same name and style of Chin Thye Mining Kongsi (hereinafter referred to as the 'Kongsi') over the lands comprised in M.L. 12661, 12660 and 12766 for lots 34214, 12221 and 34519, respectively, and C.T. 11202 and C.T. 1883 for lots 76, 70 and 952 respectively and grant 3550 for lot 120. Accordingly, an agreement of partnership (A22) was entered into on the 28th day of July 1947. Under the terms of this agreement the partners agreed to surrender to the partnership by way of capital contribution their respective interests in the aforementioned lands and to share the profits in accordance with their respective shares in the estate as agreed to under the deed of family settlement. It was also agreed that no partner should dispose of his interest in the lands without the consent in writing of all the other partners. The agreement was, however, subject to the kongsi obtaining a loan from the Chinese Tin Mines Rehabilitation Loans Board (hereinafter referred to as the 'Board'). Subsequently, a loan of $55,300 was obtained from the board and the partnership agreement became effective as from the 25th day of November 1947. The sole and exclusive management of the mine was placed in the hands of a board of directors composed of the two plaintiffs and the 2nd and 3rd defendants with the 2nd defendant as the manager.

Thereafter mining operations were carried on over the lands comprised in M.L. 12661 and 12660. About a year later, the mine had to be closed down for want of sufficient working capital. Thereupon the partners decided on two courses of action. The first, was to apply for conversion of the two agricultural lands comprised in C.T. 11202 for lot 7670 and C.T. 1883 for lot 952 into mining lands and to sub-lease them to the 1st defendant in consideration of the payment of tribute at the rate of 9%; and the second, was to resume mining operations with an additional capital of $10,000 which the 1st defendant agreed to advance on condition he was given the sole management of the mine and was paid a greater share of the profits than originally agreed to. In regard to the first proposition, two agreements (A30 and A31) were entered into on October 6, 1949 by the 1st defendant on the one hand and the partners as representatives of the kongsi on the other. Evidence was led on behalf of the plaintiffs, to the effect that the agreements were between the 1st defendant as representative of the kongsi on the one hand and the co-owners of the lands in question on the other. I cannot accept this interpretation of the agreement. The opening words of the first paragraph of A30 reads as follows:—

> "In consideration of the sum of dollar one ($1.00) now paid to us by Lee Chee Phooi alias Lee Sui Loon of 83, High Street, Gopeng, as representative of Chin Thye Tin Mining Kongsi of Sungei Raia (the receipt of which is hereby acknowledged) we, the undersigned registered proprietors of the land comprised in and held under of twenty two (22) acres two (2) and twenty five (25) poles, and situate in the Mukim of Sungei Raia, in the District of Kinta, in the State of Perak, Federation of Malaya (hereinafter referred to as the 'said land') hereby undertake to apply for a conversion of the said land into mining land."

Since the comma appears after the word 'we' and not before it, the words "as representative of Chin Thye Tin Mining Kongsi" qualifies the pronoun 'we' and not the noun "Lee Chee Phooi alias Lee Sui Loon". The other agreement (A31) is worded differently but the meaning is same and equally clear. Besides it would be absurd for the kongsi to pay the partners a tribute at the rate of 9% only when they would be entitled as partners to all the profits.

With regard to the second proposition, an agreement (A33) was executed on October 10, 1949 whereunder in consideration of the 1st defendant contributing a sum of $10,000 towards the capital of the partnership, the partners agreed to give him the sole management of the mine and to a greater proportion of the profits of the kongsi.

With the conclusion of the agreement of October 10, 1949, the 1st defendant took over the management of the kongsi and resumed mining operations. At about the same time applications were made for the conversion of the two agricultural titles into mining titles as hereinbefore stated and when they were so converted in 1950, the lands were never worked by the kongsi. Nor were they sub-leased to the 1st defendant as agreed under A30 and A31. The partnership, however, appears to have contracted the lands out for mining first to one Ho Kit Seng for about 7 months during 1951/1952 and then for about 10 months during 1955/1956 to one Goh Toh Huat. As for mining operations by the kongsi under the management of the 1st defendant, the mine was closed down according to the plaintiffs in 1955 with the departure of the 1st defendant to Hong Kong and according to the defendants in 1951. On this question I accept the evidence of the defendants. I am satisfied that what the plaintiffs had in mind when they said that mining operations continued till 1955 is mining by other persons on contract under mining permits given by the kongsi.

The basis of the plaintiffs' claim is breach of trust. The trust is said to be both express and constructive. Express — in that the 3rd defendant was entrusted by the beneficiaries of the estate of Lee Koo, deceased, with all matters relating to the mine including the safe custody of the documents of title. Constructive — in that as between themselves the plaintiffs and defendants had fiduciary relations as co-benefi-

ciaries and co-lessees. The breach of trust is said to have arisen in this way: The 3rd defendant acting in his capacity as trustee had applied for renewal of M.C. 1865 and M.C. 1870 but had not succeeded because he made no effort to get in touch with all the co-lessees to sign the application forms as required by the collector. Subsequently, he had instructed his solicitors to apply for renewal on behalf of all the co-lessees, but their application was also rejected. However, in the letter rejecting the application the collector had invited the co-lessees to forward another application for a new title, but this information was suppressed from the plaintiffs and by making use of it, the defendants had by virtue of their former interest in the lands as co-lessees obtained the same for their exclusive use and benefit. Even though it was the 3rd defendant who was entrusted with the affairs of the mine, it is claimed that the 1st and 2nd defendants are nevertheless obliged to account to the plaintiffs for any personal advantage gained since they had benefitted by the special knowledge obtained by the 3rd defendant while acting in a fiduciary capacity. The situation, it is contended, is no different from that in *Phipps* v. *Boardman & Ors.*[1] where a *cestui que trust* and a solicitor for the trustees were ordered to account for the gain they had made at the expense of the other *cestui que trust* by virtue of special information gained in the course of their acting on behalf of the trustees.

I am unable to hold on the evidence that the 3rd defendant was entrusted by the beneficiaries of the estate of Lee Koo, deceased, with all matters relating to the mine or with the safe custody of the documents of title as claimed by the plaintiffs. The onus is upon the plaintiffs to prove entrustment. Their evidence is too sweeping and vague and not supported by independent evidence. They made no effort to call any of the former beneficiaries to corroborate their evidence and I rule that the statutory presumption under section 114 of the Evidence Ordinance operates against them. However, I am satisfied that after the 1st defendant had left for Hong Kong, the 3rd defendant did voluntarily assume responsibility for the successful conclusion of all matters relating to the conversion and renewal of M.C. 1865 and M.C. 1870 on behalf of the co-lessees with the acquiescence of the partners of the kongsi.

As for the inability of the 3rd defendant to contact all the co-lessees in order to obtain their signatures on the application forms for the renewal of titles, the signatures of all the partners of the kongsi alone would not have sufficed. According to the evidence, the 3rd defendant was not aware of the whereabouts of the personal legal representative of Au Kong, deceased, or of the next-of-kin of Fong Shau Nam, deceased, to whose estate it would appear a legal personal representative was not even appointed. The deceased co-lessees during their lifetime or the legal personal representative of any of them or their next-of-kin do not appear to have taken any interest whatever in the mining of the lands. Perhaps, the registered interest of the deceased co-lessees had been rendered nominal by virtue of some private deal with Lee Koo, deceased. Otherwise, it is certainly curious that no mention is made of their interest in the partnership agreement. No provision is made for the payment of tribute or for the sharing of profits with them. If the deceased persons were only nominal co-lessees it could account for the next-of-kin or the legal personal representative of any of them not informing the kongsi of their movements or change of address. I have no reason to disbelieve the 3rd defendant's evidence that he was unable to contact the representatives of the deceased co-lessees. However, I do not accept the evidence that he was not able to contact some of the partners of the kongsi. They are all, including the 3rd defendant members of one family and he must be deemed to have had the means of ascertaining their addresses. He simply did not attempt to contact all of them probably because the representatives of the deceased co-lessees were not available to sign the necessary documents. He has only himself to blame if anyone saw in the way he handled the matter a design to allow the titles to expire and then to apply for a fresh title for himself. That view was taken by the 1st plaintiff in his letter (P.4) to the Mentri Besar of Perak dated November 5, 1964. However, I am satisfied from the evidence that up to the time the collector wrote to M/S Leong Yew Koh & Co., informing that the titles had expired, the 3rd defendant had no intention of allowing the titles to lapse or to apply for a new title for himself and to other defendants to the exclusion of the plaintiffs.

The applications for renewal of M.C. 1865 and M.C. 1870 are both dated the 19th of August 1960. The partnership in the kongsi was terminated by a notice (A70) dated the 27th of October 1960. If the 3rd defendant had any design to allow the mining titles to lapse and secure the lands for himself he need not have done anything more to pursue his application for renewal after the dissolution of the partnership. But he persisted in his attempts to renew the titles. He wrote (A77) to the collector on March 10, 1961 informing that he could not get in touch with all the co-lessees and to consider his application as if he represented all the co-lessees. On the collector refusing to accede to this request he wrote (A78) on May 4, 1961 informing that he had obtained the consent and approval of all the co-lessees to pursue his application. This information was false and is admitted by him to be so. But the letter, however, gives a clear indication that he was determined to renew the titles in the names of all the co-lessees at any

cost, even by giving false information. The matter, however, did not end there. He then instructed his solicitors to apply for renewal on behalf of all the co-lessees. It was in rejecting the solicitors' application in respect of one of the titles that the collector wrote the controversial letter (P.3) dated November 8, 1962 which reads as follows:—

"Gentlemen,

Renewal of Mining Certificate No. 1865
Lot No. 7670 Mukim of Sungei Raia
by Mr. Lee Chee Hoong and Others.

I have the honour to refer to your letter MEM/WFH/LCL dated 27.8.62, and to inform you that as the title has already expired on 20.8.60, fresh application on the appropriate form for a mining lease over the land should be submitted.

The application form must be signed by all the co-lessees and eight copies of the plan must be submitted together with the application.

I have the honour to be,
Gentlemen,
Your obedient servant,
?
PEMUNGUT KHAZANAH TANAH
KINTA. "

The onus of proving that the contents of the collector's letter were communicated by the 3rd defendant to the former partners of the kongsi is upon the defence. The 1st defendant did not attend the trial as he was absent in Hong Kong. The 3rd defendant (D.W.1) despite his admission that he was not on talking terms with the 1st plaintiff, deposed that he had orally informed all the interested parties. The 2nd defendant said the same thing except that in the case of the 1st plaintiff he had informed him by letter. That letter is P.7 dated the 24th of April 1963. It was produced at the trial and had to be admitted by consent since it was not disclosed in the 1st plaintiff's affidavit of documents. The letter completely discredits the allegation in paragraph 10 of the statement of claim that the plaintiffs were unaware of the defendants' application for a new title until after it was granted. Since it is now admitted that the 1st plaintiff was informed of the expiry of the old titles and of the 3rd defendant's intention to apply for a new title, I have no reason to disbelieve the defence evidence that all the co-lessees other than the next-of-kin of the deceased co-lessees were informed of the same. However, I am not satisfied from the evidence that the plaintiffs were informed of the collector's request that all the co-lessees should forward a fresh application. Even P.7 is silent in regard to this request. The letter reads as follows:—

"Dear bro,

I receive a report from Chee Hoong saying that the mines office has regarded our lands 40 acres opposite the the river and the 18 acre and 22 acre as expired and none of our previous applications for renewal is treated as valid. So he is now sending in fresh application for those lands again. He said he would put my name in to join in with him for the application. I doubt he would ask you to join in.

You may ask Chee Keong about this matter, perhaps he may have a clearer picture of it. You may send in a fresh application yourself as these lands are now treated as State land and it is open to application from any person. Make further investigation if you are interested.

Your loving bro,
Chee Koon. "

Now the question relevant for the determination of this case is: Does the collector's invitation for a fresh application to be forwarded signed by all the former co-lessees imply an offer to grant a new title to the lands to them to the exclusion of any other applicant? I cannot discern any such offer in the letter. It appears to me to be a routine reply informing the applicants that the titles had expired and an application for a new title may be forwarded signed by all the co-lessees. To read anything more into that letter would imply that the collector had arrogated to himself the duties of the senior inspector of mines who advises him as to whom a title should be approved from among a number of other applicants. In this case there were three other applicants. I do not think that any special significance should be attached to the collector's request that the application should be signed by all the co-lessees. This request was obviously made because of past experience in regard to the abortive attempts to renew the titles.

For the plaintiffs to succeed in this action, they must prove that the defendants had applied for and obtained the lands to the exclusion of the plaintiffs in breach of trust or in breach of confidence of a fiduciary nature. There is no question in this case of any relation of executor and beneficiaries or of co-partners subsisting between the 3rd defendant and the plaintiffs. The estate of Lee Koo, deceased, was distributed on or before 1947 when the respective interests of the beneficiaries other than the widow's in immovable property were registered in their respective names and the widow's interest was registered in the names of the executors as trustees, and the movable property consisting of mining equipments were taken over by the kongsi in which all the beneficiaries were partners. As for the relationship between the 3rd defendant and plaintiffs as partners, the partnership was dissolved in October 1960. It is true that the partnership was subsisting when the 3rd defendant first applied for renewal of titles but it was not subsisting when the final application was made by his solicitors. Had the partnership subsisted when the defendants forwarded their application for a new title in May 1963, I would not have hesitated, on the authority of *Clegg* v. *Edmondson* [2] to grant the reliefs prayed for.

The issues in the present case will have to be determined on the basis of relationship bet-

ween the parties as co-lessees only. In *Pickering* v. *Vowles* [3] which was cited before me, where a tenant for life of a leasehold under a marriage settlement suffered the lease to expire and obtained another lease for himself and died, it was held that the deceased must be deemed to have held the renewed lease on trust for the settlement. In the instant case, the 3rd defendant was not registered as a co-lessee under any trust settlement, nor could he be said to have suffered the lease to expire. The mining titles in this case could never have been renewed unless all the co-lessees without exception were available to sign the application form.

The rule in *Keech* v. *Sandford* [4] is that no legal impediment to the renewal of a lease on behalf of a *cestui que trust* who is a minor could operate to entitle the trustee to renew the lease in his name for his personal gain. In *Snell's* Principles of Equity (25th Edition) at page 216, the learned commentator says, and I quote:—

"The rule in *Keech* v. *Sandford* has been extended in a modified form to persons who, though not in a definite fiduciary relationship to the other persons interested, have a partial interest in the lease. The renewed lease is looked upon as a continuation of the original lease, and so if there is any ground for intervention of equity, the grantee of the renewed lease will be treated as holding it for the benefit of the same persons as were interested in the original lease. Thus if a renewal is obtained by a partner, a mortgagor or mortgagee, a joint tenant or a tenant in common, or a tenant for life there is a rebuttable presumption that the renewed lease is held on a constructive trust. If the lessee can show that he did not in any way abuse his position or intercept an advantage coming to the estate; and is guilty of no breach of faith, he may retain the lease for his own benefit; but it is difficult for a partner, or, in less degree for a mortgagor or mortgagee, to rebut the presumption."

It is quite true that all the parties to this action had a partial interest in the lease; and in normal circumstances, it would not be incorrect to draw the inference, assuming of course that the grant of a new title to the same land amounted to a renewal of the lease, that the defendants held that land in trust for themselves and the other co-lessees. But that presumption is a rebuttable one. In this case the defendants applied for a new title to the same land after the land had reverted to the State and with notice to the plaintiffs. This action originated with the plea that the defendants had applied for a new title without the knowledge of the plaintiffs and without being informed that the former titles had expired. That plea has been proved to be untrue. Then it is claimed that the defendants must be deemed to hold the land in trust for themselves and the other co-lessees because the title was obtained by use of special information gained by the 3rd defendant in the course of his trusteeship. The mining titles expired in August and September 1960 and thereupon the relation between the defendants and plaintiffs as co-lessees ceased. The partnership in the kongsi was dissolved in October 1960; thereupon their relation as partners ceased. In 1963 when the defendants applied for a new title to the same lands the only common tie which subsisted between them was their common parentage. Even if fiduciary relations had subsisted by virtue of the 3rd defendant taking upon himself the responsibility to apply for renewal of titles, that relationship would have ended when the plaintiffs were informed that the titles had expired and it was open for anyone to apply for a new title. The omission to inform the plaintiffs that the collector had suggested that all the co-lessees should sign an application for a new title, does not in my opinion, amount to the suppression of special information vital to the success of the application. The three defendants had succeeded in obtaining a new title despite the fact that they did not constitute all the former co-lessees. In April 1963 the 1st plaintiff was advised in P.7 to consult the 2nd plaintiff and to apply for a new title by himself or to make further investigation if he was interested. He did nothing until November 1964, when the price of tin was attractive, to write the letter of protest to the Mentri Besar over the grant of a title to the defendants. The 3rd defendant was under no obligation, as far as I can see, either legal or moral, to have applied for a new title on behalf of all the other co-lessees. Nor could he have objected if all or some of the other co-lessees had put in a joint application on behalf of themselves. I find no merit in the claim in this action.

The suit is dismissed with costs.

Claim dismissed.

Solicitors: *Gibb & Co.; Maxwell, Keni n, Cowdy & Jones.*

SAW TONG SENG v. ONG KIM HOON

[O.C.J. (Winslow J.) December 9, 1967]
[Singapore — Suit No. 566 of 1967]

Damages — Personal injuries — Right arm — Loss of — Disarticulation from shoulder joint — No benefit from artificial arm — Taxi driver — No longer able to drive taxi again — Loss of earning — General damages — Devaluation — Living standard.

The plaintiff, a taxi driver aged 34 had his right arm disarticulated from the shoulder joint as a result of an accident for which the defendant admitted liability. The medical consultant was of the opinion that the plaintiff had lost the use of that arm completely and he could never derive any benefit from the artificial arm which would merely serve as an ornament. The plaintiff was earning a salary of about $200 per month. It was also in evidence that he would no longer be able to drive a taxi and had not done so since the accident.

Held: (1) in assessing general damages there are three elements to be considered: (a) pain and suffering, (b) loss of future earnings, and (c) the disadvantage arising from disablement apart from loss of earning power. With regard to (c), one must take into account factors such as loss of the amenities and enjoyment of